

Laurel Nesbitt

From: Laurel Nesbitt
Sent: Wednesday, August 16, 2023 5:27 PM
To: Patti Williams; Trish Hernandez
Cc: Nancy Simmons; Stephanie Welch; Jason Gordon; Jesse Clifton; Holly Mell; Max Kauffman; John Hall
Subject: M.G. v. Scrase Discovery--Refinement of Search Terms List
Attachments: 23-8-16 Refinement of Search Terms List.docx

Dear Patti,

In an effort to resolve discovery disputes, I am attaching an updated and refined search term list, which Plaintiffs hope will be helpful in narrowing and guiding the correspondence searches required by some of Plaintiffs' requests for production of documents.

When we held our meet and confer back in early May, you, Jesse, Holly and I discussed the original list of search terms we had sent in March. You indicated during the meeting that you would talk with HSD's IT people to get input on how to approach these searches. To my knowledge, we never heard back from you on that point. Please let me know if I'm wrong about that. If they have already initiated those searches using the previous terms, we certainly don't want to complicate matters.

Regardless, Plaintiffs still would like to work to address Defendants' burdensomeness objections while yielding necessary correspondence discovery. Toward that end, you will see that the attached document:

1. Narrows the temporal scope of nearly all of the listed requests by two years, to January 2020 to present;
2. Eliminates some groups of search terms that were part of the initial list (namely the first "private duty nursing" set and the two sets including "NFLOC" or "NF LOC")
3. Eliminates some of the names on the previous list, namely Tracie Collins, Lorie Pacheco, Megan Pfeffer, and Melodee Koehler
4. Adds the names of new HSD leadership (Kari Armijo and Lorelei Kellogg) as well as individuals who have been identified by HSD to the MCOs as points of contact for the recent deliverables (Annabelle Martinez, Alicia Salazar, Maria Kniskern, and the HSD-MCO Deliverables Email)
5. Aligns each request (or sets of requests) with a limited number of names and search terms, for greater precision.

Please let us know by **close of business Friday 8/18** if you would like to discuss further these proposed limitations, or any of the issues set out in Plaintiffs' letter of August 4th. Although Plaintiffs are working under Judge Martinez's August 21st deadline for the Motion to Compel, we have a continued interest in narrowing further or eliminating any discovery disputes we are able to before that motion is decided. And if there are issues we can resolve before the motion is filed on Monday, even better.

Best,
Laurel

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Disability Rights New Mexico

EXHIBIT

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**PROPOSED LIMITATIONS ON SEARCH TERMS AND INDIVIDUALS
WHOSE CORRESPONDENCE IS SUBJECT TO SEARCH**

A. Communications with MCOs about PDN and Rates

RFP No. 8

For the period January 1, 2018 to the present, please produce all agreements, memoranda, or other communications (including notes, letters, and e-mail messages) concerning availability of private duty nursing services, between HSD and (a) Blue Cross Blue Shield of New Mexico, (b) Western Sky Community Care Inc., (c) Presbyterian Health Plan Inc., and (d) the Medically Fragile Case Management Program.

Plaintiffs propose: (1) limiting the temporal scope of this request to January 1, 2020 to present, and (2) narrowing the correspondence searched to former and current MAD Directors, Deputy Directors, MCO Contract Managers, and the inbox for HSD-MCO Deliverables (see, e.g., HSD 1084), as follows:

Nicole Comeaux
Angela Medrano
Lorelei Kellogg
Annabelle Martinez
Alicia Salazar
Maria Kniskern
HSD-MCO Deliverables (see, e.g., HSD 1084)

Using search terms:

“nursing” AND “MF”
“nursing” AND “medically fragile”
“nursing” AND “EPSDT”
“nursing” AND “waiver”
“nursing” AND “MFW”
“nursing” AND “non-waiver”
“nursing” AND “MFE”
“nursing” AND “children”
“nursing” AND “shortage”

“PDN” AND “medically fragile”
“PDN” AND “MF”
“PDN” AND “EPSDT”
“PDN” AND “waiver”
“PDN” AND “MFW”
“PDN” AND “non-waiver”
“PDN” AND “MFE”
“PDN” AND “children”
“PDN” AND “Shortage”

RFP No. 20 (formerly A.C. 23)

For the period January 1, 2018 to the present, all communications, including but not limited to Letters of Direction, between HSD employees and employees of MCOs Presbyterian Health Plan, Inc., Blue Cross Blue Shield of New Mexico, and/or Western Sky concerning negotiated rates for EPSDT Private Duty Nursing Services.

Plaintiffs propose: (1) limiting the temporal scope of this request to January 1, 2020 to present, and (2) narrowing the correspondence searched to:

David Scrase
Kari Armijo
Nicole Comeaux
Angela Medrano
Lorelei Kellogg
Annabelle Martinez

B. Internal Communications, Communications with DOH, and Communications with Family Advisory Board and Medically Fragile Case Management Program about PDN and HHA Services

RFP Nos. 11 (formerly M.G. 12), 12 (formerly M.G. 13), 13 (formerly M.G. 14)

RFP No. 11: For the period January 1, 2018 to the present, all communications and recordings regarding Private Duty Nursing services or Home Health Aide services for medically fragile children receiving EPSDT benefits, including but not limited to email messages, text messages, fax communications, audio, visual, or text meeting recordings, and letters, between:

- Members of the Family Advisory Board and HSD and Department of Health (DOH) employees.
- Family Advisory Board coordinator(s) and HSD and Department of Health (DOH) employees.

RFP No. 12: For the period November 1, 2020 to the present, all communications regarding the Family Advisory Board and its meetings between:

- Medically Fragile Case Management Program staff and HSD employees
- Medically Fragile Case Management Program staff and DOH employees
- DOH employees and HSD employees

RFP No. 13: For the period January 1, 2018 to the present, all communications regarding EPSDT Private Duty Nursing and Home Health Aide services for medically fragile children between Medically Fragile Case Management Program RN Case Managers, including Case Manager supervisors, and HSD and DOH employees.

Plaintiffs propose: (1) limiting the temporal scope of this request to January 1, 2020 to present, and (2) narrowing the correspondence searched to:

- the following HSD employees, searching for correspondence with DOH employees Iris Clevenger and/or Scott Doan; and
- the following HSD employees, searching for correspondence with MF CMP employees: Christina Barden, Marcia Moriarty, and/or Annemarie Parmenter:

David Scrase
Kari Armijo
Melanie Buenviaje
Angela Medrano
Sharilyn Roanhorse
Aaron Maestas
Nicole Comeaux
Lorelei Kellogg
Christina Kupferschmidt
Annabelle Martinez

Using search terms:

“medically fragile” AND “advisory board”
“medically fragile” AND “FAB”
“MF” AND “advisory board”
“MF” AND “FAB”

“PDN” AND “medically fragile”
“PDN” AND “MF”
“PDN” AND “EPSDT”
“PDN” AND “waiver”
“PDN” AND “MFW”
“PDN” AND “non-waiver”
“PDN” AND “MFE”
“PDN” AND “children”
“PDN” AND “Shortage”

“nursing” AND “MF”
“nursing” AND “medically fragile”
“nursing” AND “EPSDT”
“nursing” AND “waiver”
“nursing” AND “MFW”
“nursing” AND “non-waiver”
“nursing” AND “MFE”
“nursing” AND “children”
“nursing” AND “shortage”

RFP 18 (formerly A.C. 21)

For the period January 1, 2018 to the present, all communications regarding availability of EPSDT Private Duty Nursing and Home Health Aide services, between HSD employees, and between HSD and DOH employees, including but not limited to any communications regarding the 10/27/21 email from DRNM to HSD, attached to these amended requests as Exhibit 1.

Plaintiffs propose: (1) limiting the temporal scope of this request to January 1, 2020 to present, and (2) narrowing the correspondence searched to:

- the following HSD employees, and
- the following HSD employees with DOH employees Iris Clevenger and/or Scott Doan

David Scrase
Kari Armijo
Melanie Buenviaje
Angela Medrano
Sharilyn Roanhorse
Aaron Maestas
Nicole Comeaux
Lorelei Kellogg
Christina Kupferschmidt
Annabelle Martinez

Using search terms:

“PDN” AND “medically fragile”
“PDN” AND “MF”
“PDN” AND “EPSDT”
“PDN” AND “waiver”
“PDN” AND “MFW”
“PDN” AND “non-waiver”
“PDN” AND “MFE”
“PDN” AND “children”
“PDN” AND “Shortage”

“nursing” AND “MF”
“nursing” AND “medically fragile”
“nursing” AND “EPSDT”
“nursing” AND “waiver”
“nursing” AND “MFW”
“nursing” AND “non-waiver”
“nursing” AND “MFE”
“nursing” AND “children”
“nursing” AND “shortage”

RFP No. 22 (formerly A.C. 32)

For the period January 2018 to the present, all documents and recordings of meetings of the Medically Fragile Family Advisory Board (“Family Advisory Board” or “FAB”) in the possession, custody and control of HSD or DOH employees who participated in any FAB meetings, including but not limited to meeting agendas, meeting logs, audio, visual, or text meeting recordings, minutes, notes, documents presented or shared (including but not limited to presentation materials regarding Private Duty Nursing services and/or Home Health Aide services for medically fragile children.

Plaintiffs propose narrowing the correspondence searched to the following HSD personnel, who are known to have participated in, or been advised of, FAB meetings:

Christina Kupferschmidt
Melanie Buenviaje
David Scrase
Aaron Maestas
Sharilyn Roanhorse

Using search terms:

“medically fragile” AND “advisory board”
“medically fragile” AND “FAB”
“MF” AND “advisory board”
“MF” AND “FAB”

C. DATA ANALYSIS

RFP No. 17 (formerly A.C. 19)

For the period October 1, 2021 to the present (to 5/12/23 for A.C.), all EPSDT and Medically Fragile Waiver home health care billing data (including but not limited to electronically stored information) submitted by MCOs to Defendant HSD, and any analysis of that data produced by MCOs or HSD, with respect to M.G., A.C., and C.V.

Plaintiffs propose narrowing the search for analysis of the data to:

David Scrase
Kari Armijo
Nicole Comeaux
Lorelei Kellogg
Alicia Salazar
Maria Kniskern
HSD-MCO Deliverables (see, e.g., HSD Bates No. 1084)
Any other applicable data analyst(s) at HSD from the relevant time period
Any other MCO contract manager at HSD from the relevant time period

Using search terms:

“procedure code” AND “T1000”
“procedure” AND “T1000”
“code” AND “T1000”

“billing” AND “580”
“code” AND “580”
“580” AND “TE”
“580TE”
“TE580”
“modifier” AND “TE”

“billing” AND “550”
“code” AND “550”
“550” AND “TD”
“550TD”
“TD550”
“modifier” AND “TD”

D. Other Suggested Limitations, Not Addressing Search Terms Specifically

RFP No. 7

Please produce all documents and electronically stored information relied upon in your answer to Interrogatory No. 8 [*re: reasons for State Plan Amendment*], including but not limited to correspondence to or from HSD employees regarding the state plan amendment implementing personal care services and private duty nursing rate increases.

Plaintiffs do not believe that this request requires any specific search terms, since it simply references Interrog. No. 8, regarding the reasoning behind the State Plan Amendment. We are fine with limiting both Interrog. No. 8 and RFP 7 to the decision makers with respect to the State Plan Amendment, and the data/correspondence of those individuals with respect to that decision. However, if you or HSD's IT people think that there are search terms that would help capture this, we are open to suggestions.

RFP No. 14 (formerly M.G. 15)

For the period January 1, 2018 to the present, all documents concerning any meetings between Medically Fragile Case Management Program employees and HSD or DOH employees involving discussion of EPSDT Private Duty Nursing and Home Health Aide services for medically fragile children.

Plaintiffs propose: (1) limiting the temporal scope of this request to January 1, 2020 to the present, and (2) beginning by asking the following list of individuals whether they had meetings about PDN or HHA services for medically fragile children, then (3) asking only those individuals who remember such meetings for documents concerning those meetings.

For HSD:

David Scrase
Kari Armijo
Melanie Buenviaje
Angela Medrano
Sharilyn Roanhorse
Aaron Maestas
Nicole Comeaux
Lorelei Kellogg
Christina Kupferschmidt
Annabelle Martinez

For DOH:

Iris Clevenger
Scott Doan

RFP 21 (formerly A.C. 27)

For the period January 1, 2018 to the present, all saved chats, recorded meetings, meeting minutes, notes, email messages, agendas, and materials for meetings between HSD or DOH employees and employees of Presbyterian Health Plan, Inc., Blue Cross Blue Shield of New Mexico, and/or Western Sky involving

discussion of Private Duty Nursing and/or Home Health Aide services for medically fragile children under the age of 21.

Plaintiffs propose: (1) limiting the temporal scope of this request to January 1, 2020 to the present, and (2) beginning by asking the following list of individuals whether they had meetings about PDN or HHA services for medically fragile children, then (3) asking only those individuals who remember such meetings for any saved chats, recorded meetings, meeting minutes, email messages, agendas, and materials for those meetings.

For HSD:

David Scrase
Kari Armijo
Melanie Buenviaje
Angela Medrano
Sharilyn Roanhorse
Aaron Maestas
Nicole Comeaux
Lorelei Kellogg
Christina Kupferschmidt
Annabelle Martinez
Alicia Salazar
Maria Kniskern

For DOH:

Iris Clevenger
Scott Doan